

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

OP.No. 16988 of 1999(V)

PETITIONER:

P. SOMASUNDARAM, OFFICIAL LIQUIDATOR, PARAPPANANGADI REGIONAL
FISH MARKETING SOCIETY LTD., NO. F. (M) 709, PARAPPANANGADI.

BY ADV. SRI.M.V.BOSE
SRI.CHERIAN VARGHESE
SRI.VINOD MADHAVAN

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVT.
REVENUE DEPARTMENT, THIRUVANANTHAPURAM.
2. THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.
3. THE DEPUTY COMMISSIONER OF AIT & ST, MALAPPURAM.
4. THE SALES TAX OFFICER, THIRURANGADI.

ADDL. 5. DISTRICT COLLECTOR, MALAPPURAM.

ADDL. R5 IS IMPEADED AS PER JUDGMENT

BY GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 22/11/2007 THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON CMP 27745 OF 1999 IN OP 16988 OF 1999

DISMISSED

22.11.2007

SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ORDER DATED 29.10.1987 OF THE FOURTH RESPONDENT.

EXT.P2 TRUE COPY OF THE APPLICATION DATED 1.2.1988 BEFORE THE FIRST RESPONDENT BY THE PETITIONER.

EXT.P3 TRUE COPY OF THE JUDGMENT IN OP 12481 OF 1991 OF THE HON'BLE HIGH COURT OF KERALA DATED 18.2.1994

EXT.P4 TRUE COPY OF THE ORDER DATED 5.3.1998 OF THE THIRD RESPONDENT

EXT.P5 TRUE COPY OF THE APPLICATION DATED 20.5.1998 BEFORE THE BOARD OF REVENUE BY THE PETITIONER.

EXT.P6 TRUE COPY OF THE ORDER DATED 26.5.1999 OF THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 16988 OF 1999

Dated this the 22nd day of November, 2007

JUDGMENT

The District Collector, Malappuram, is impleaded as addl. 5th respondent.

2. Petitioner is challenging penalty order under Section 45A of the KGST Act for failure to remit collected sales tax obtained on sale of movables of the society in liquidation proceedings. Sale was during 1986. Petitioner's case is that his predecessor conducted the sale and he is no more. For this kind of grave irregularity, recovery should be made from the person who conducted the sale. However, since the person who committed the irregularity is no more, I dispose of the O.P. with following directions: (1) If the present Official liquidator sells the balance assets of the society and pays up the arrears of tax with interest then penalty levied on the liquidator will stand cancelled. However, cancellation will take effect only after settlement of liability with interest; (2) If liability is not settled, the addl. fifth respondent will issue notice to the official liquidator who conducted sale, if he is alive,

and also to the Bank and recover the liability and interest from the Bank after hearing them also, as the revenue has priority over bank debt in recovery proceedings. If tax is recovered by the Collector from the Bank, then also penalty proceedings against the official liquidator will stand cancelled. (3) In any case since the person who committed the irregularity is no more penalty will stand cancelled and if he is alive personal recovery can be made from him after issuing notice and holding him responsible for the irregularity.

(C.N. RAMACHANDRAN NAIR)
Judge

